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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,741	08/05/2003	Sajeev Madhavan	200209682-1	9672

22879 7590 09/05/2008
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EXAMINER

DAILEY, THOMAS J

ART UNIT	PAPER NUMBER
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2152

NOTIFICATION DATE	DELIVERY MODE
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09/05/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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DETAILED ACTION

1. Claims 1-2, 4-16, 18-25 and 27-30 are pending.

Response to Arguments

2. The 35 USC 112 first paragraph rejections are withdrawn in view of the entered amendments.
3. Applicant's arguments filed June 11, 2008 in regards to the prior art rejections of the claims have been fully considered but they are not persuasive.
4. The applicant argues with respect to claims 1, 15, and 22 that Kaminsky (US Pub. No. 2004/0078622) teaches away from "configuring said selected free computing resource to operate in said computing system, after replacing said operating computing resource with said free computing resource in said computing system, wherein said free computing resources comprises resources that are not preconfigured for use in said computing system according to a configuration of said operating computing resource," and therefore the combination of Kaminsky and Evans (US Pub. No. 2004/0039815) is improper.
5. The examiner disagrees and notes in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of

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references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Evans was relied upon to disclose a pool of free computing resources in a computing system ([0009], lines 13-15, resources in an idle group read on “free computing resources) and configuring said selected free computing resource to operate in said computing system ([0009], lines 4-15), wherein said free computing resources comprises resources that are not preconfigured for use in said computing system ([0024], lines 1-9, when a resource is assigned to a resource group it needs to be reconfigured, i.e. it was not preconfigured to operate for that specific application, in the example a web server).

Further, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

6. Lastly, the applicant argues that the proposed modification would change the principle operation of Kaminsky and would render Kaminsky unsatisfactory for its intended purpose.

7. Again the examiner notes, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-2, 4-16, 18-25, and 27-30 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Kaminsky et al (US Pub. No. 2004/0078622 A1), hereafter "Kaminsky," in view of Evans et al (US Pub. No. 2004/0039815), hereafter "Evans."
10. As to claim 1, Kaminsky discloses a computing resource management method (Abstract) comprising:

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establishing a pool of free computing resources in a computing system ([0026], lines 1-6 and [0023], lines 6-10, the server farm reads on “a pool of free computing resources”, and the computing resources of the server farm are free in the sense that the server is available, i.e. it is not currently executing anything);

selecting a free computing resource from said pool of free computing resources to replace an operating computing resource in said computing system ([0033] a new server (free computing resource) is selected from the server farm (pool of resources) to respond to request that was directed to the initially assigned server (operating computing resource)); and

configuring said selected free computing resource to operate in said computing system, after replacing said operating computing resource with said free computing resource in said computing system ([0033], an available server is assigned to replace the assigned server (operating computing resource), i.e. it is configured to operate).

But, Kaminsky does not disclose that said free computing resources comprise resources not preconfigured for use in said computing system according to a configuration of said operating computing resource.

However, Evans discloses a pool of free computing resources in a computing system ([0009], lines 13-15, resources in an idle group read on “free computing resources) and configuring said selected free computing resource to operate in

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said computing system ([0009], lines 4-15), wherein said free computing resources comprises resources that are not preconfigured for use in said computing system according to a configuration of said operating computing resource ([0024], lines 1-9, when a resource is assigned to a resource group it needs to be reconfigured, i.e. it was not preconfigured to operate for that specific application, in the example a web server).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to combine the teachings of Kaminsky and Evans in order to optimize the utilization of individual computing resources in a heterogeneous network (heterogeneous in respect to the applications they process) (Evans, [0008]).

11. As to claims 15 and 22, they are rejected by the same rationale set forth in claim 1's rejection.

12. As to claim 2, Kaminsky and Evans disclose the invention substantially with regards to the parent claim, and further disclose said selected free computing resource is configured to operate in accordance with a configuration of said operating computing resource being replaced (Kaminsky, [0033], when the new server (free computing resource) is assigned it will inherently be configured to operate the same the initially assigned server (operating computing resource) it

is replacing was, otherwise it would not be able to respond to the incoming requests and thereby would not be replacing initially assigned server).

13. As to claim 4, Kaminsky and Evans disclose the invention substantially with regards to the parent claim, and further disclose said selecting and configuring said free computing resource is initiated automatically upon a failure of said operating computing resource in said computing system (Kaminsky, [0018], lines 5-9 and [0029], lines 1-3, the retry request reads on "a failure").

14. As to claim 5, Kaminsky and Evans disclose the invention substantially with regards to the parent claim, and further disclose said selecting and configuring said free computing resource is initiated in response to an end-user request for a changed operating computing resource in said computing system (Kaminsky, [0018] and Fig. 2, lines 5-9, the client (an end-user) issues a retry request (request for a changed operating resource) to the sprayer which then selects and configures a new server (free computing resource)).

15. As to claim 6, Kaminsky and Evans disclose the invention substantially with regards to the parent claim, and further disclose said selecting and configuring of said free computing resource is based on a usage plan for using said free resources in said free pool of computing resources (Kaminsky, [0033], lines 5-8).

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16. As to claim 7, Kaminsky and Evans disclose the invention substantially with regards to the parent claim, and further disclose said usage plan for using said free resources is implementable automatically in response to a failure of an operating computing resources in said computing system (Kaminsky, [0029], lines 1-3 and [0033], lines 5-8).
17. As to claim 8, Kaminsky and Evans disclose the invention substantially with regards to the parent claim, and further disclose said selecting and configuring said free computing resource to replace said operating computing resource occurs transparently to end-users in said computing system (Kaminsky, Fig. 2, the client (end-user) is not directly aware due to the fact it has no way of seeing the internal communication of the server farm).
18. As to claim 9, Kaminsky and Evans disclose the invention substantially with regards to the parent claim, and further disclose said computing system comprises a Utility Data Center (Kaminsky, Fig. 1, label 160, administration node is functionally equivalent to the claimed Utility Data Center).
19. As to claim 10, Kaminsky and Evans disclose the invention substantially with regards to the parent claim, and further disclose said computing system comprises a computer network (Kaminsky, Fig. 1, label 130).

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20. As to claim 11, Kaminsky and Evans disclose the invention substantially with regards to the parent claim, and further disclose monitoring said computing system to detect failed operating computing resources (Kaminsky, [0018], lines 5-9 and [0029], lines 1-3).

21. As to claim 12, Kaminsky and Evans disclose the invention substantially with regards to the parent claim, and further disclose relegating said failed operating computing resources to a pool of quarantined computing resources (Kaminsky, [0035], lines 1-5, by taking remedial measures and treating the failed servers differently this is in effect a quarantine).

22. As to claim 13, Kaminsky and Evans disclose the invention substantially with regards to the parent claim, and further disclose rehabilitating said failed operating computing resources for reprovisioning into said computing system (Kaminsky, [0035], lines 1-5).

23. As to claim 14, Kaminsky and Evans disclose the invention substantially with regards to the parent claim, and further disclose said computing resources comprise routers, servers, data storage systems and CPU's (Kaminsky, Fig. 1, labels 130 and 150).

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24. As to claims 16 and 25, they are rejected by the same rationale set forth in claim 2's rejection.

25. As to claims 18, 24, and 27, they are rejected by the same rationale set forth in claim 4's rejection.

26. As to claims 19 and 28, they are rejected by the same rationale set forth in claim 5's rejection.

27. As to claims 20 and 29, they are rejected by the same rationale set forth in claim 8's rejection.

28. As to claims 21 and 30, they are rejected by the same rationale set forth in claim 6's rejection.

29. As to claim 23, it is rejected by the same rationale set forth in claim 11's rejection.

Conclusion

30. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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31. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.
32. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Dailey whose telephone number is 571-270-1246. The examiner can normally be reached on Monday thru Friday; 9:00am - 5:00pm.
33. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on 571-272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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34. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. J. D./
Examiner, Art Unit 2152

/Kenny S Lin/
Primary Examiner, Art Unit 2152